



Reprinted  
February 4, 2014

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## SENATE BILL No. 366

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DIGEST OF SB 366 (Updated February 3, 2014 3:59 pm - DI 106)

**Citations Affected:** IC 24-4.5; IC 33-34; IC 34-55; noncode.

**Synopsis:** Township small claims courts and garnishments. Requires the judges of all the Marion County township small claims courts to select from among themselves a small claims administrative judge to carry out certain duties currently performed by the Marion circuit court judge, including adopting uniform rules for conducting the business of the small claims courts. Allows a vacationing small claims court judge instead of the Marion circuit court judge to authorize the appointment of a judge pro tempore to handle the judicial business of the small claims court. Makes changes to the maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment to enforce the payment of any judgments against the individual. If a judgment debtor has failed to comply with an agreed order in the action, requires a court to order: (1) any property, income, or profits of a judgment debtor not exempt from execution or process or any debt due to the judgment debtor to be applied to the satisfaction of the judgment and forbid transfers of property and choses in action; and (2) that the judgment or execution is a continuing lien upon the income or profits of the judgment debtor in the hands either of the judgment debtor or any other person from the date the order is served upon the person indebted to the judgment debtor to the extent that the lien, together with all similar liens, is allowed by law. Provides that: (1)  
(Continued next page)

**Effective:** July 1, 2014.

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### Schneider, Young R Michael

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January 14, 2014, read first time and referred to Committee on Judiciary.  
January 30, 2014, amended, reported favorably — Do Pass.  
February 3, 2014, read second time, amended, ordered engrossed.

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## Digest Continued

if a court has issued a garnishment order to a third party (such as an employer) that provides income to a judgment debtor; (2) the garnishment order no longer applies to the third party due to a change in circumstances, including a change in employment; and (3) the judgment creditor files a petition describing the changed circumstances and providing contact information for a new third party who employs or otherwise provides income for a judgment debtor; the court may, without holding a hearing, cancel the first garnishment order and issue a new garnishment order to the new third party. Urges the legislative council to assign the topic of small claims court administration to an interim study committee.



Reprinted  
February 4, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 366

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A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 24-4.5-5-105 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 105. (1) For the  
3       purposes of IC 24-4.5-5-101 through IC 24-4.5-5-108:

4       (a) "disposable earnings" means that part of the earnings of an  
5       individual, including wages, commissions, income, rents, or  
6       profits remaining after the deduction from those earnings of  
7       amounts required by law to be withheld;

8       (b) "garnishment" means any legal or equitable proceedings  
9       through which the earnings of an individual are required to be  
10      withheld by a garnishee, by the individual debtor, or by any other  
11      person for the payment of a judgment; and

12      (c) "support withholding" means that part of the earnings that are  
13      withheld from an individual for child support in accordance with  
14      the laws of this state.

15      (2) Except as provided in subsection (8), the maximum part of the  
16      aggregate disposable earnings of an individual for any workweek which

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is subjected to garnishment to enforce the payment of one (1) or more judgments against ~~him~~ **the individual** may not exceed **the lesser of the following amounts:**

(a) **An amount equal to** twenty-five percent (25%) of ~~his~~ **the individual's** disposable earnings for that week or, **upon a showing of good cause by the individual why the amount should be reduced, an amount equal to:**

(i) **less than twenty-five percent (25%); and**

(ii) **at least ten percent (10%);**

**of the individual's disposable earnings for that week.**

(b) The amount by which ~~his~~ **the individual's** disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable.

~~whichever is less.~~ In the case of earnings for a pay period other than a week, the earnings shall be computed upon a multiple of the federal minimum hourly wage equivalent to thirty (30) times the federal minimum hourly wage as prescribed in this section.

(3) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment or support withholding to enforce any order for the support of any person shall not exceed:

(a) where such individual is supporting ~~his~~ **the individual's** spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and

(b) where such individual is not supporting such a spouse or dependent child described in subdivision (a), sixty percent (60%) of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent (50%) specified in subdivision (a) shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in subdivision (b) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or support withholding to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such workweek.

(4) No court may make, execute, or enforce an order or process in violation of this section.

(5) An employer who is required to make deductions from an individual's disposable earnings pursuant to a garnishment order or series of orders arising out of the same judgment debt (excluding a



1 judgment for payment of child support) may collect, as a fee to  
2 compensate the employer for making these deductions, an amount  
3 equal to the greater of twelve dollars (\$12) or three percent (3%) of the  
4 total amount required to be deducted by the garnishment order or series  
5 of orders arising out of the same judgment debt. If the employer  
6 chooses to impose a fee, the fee shall be allocated as follows:

7 (a) One-half (1/2) of the fee shall be borne by the debtor, and that  
8 amount may be deducted by the employer directly from the  
9 employee's disposable earnings.

10 (b) One-half (1/2) of the fee shall be borne by the creditor, and  
11 that amount may be retained by the employer from the amount  
12 otherwise due the creditor.

13 The deductions made under this subsection for a collection fee do not  
14 increase the amount of the judgment debt for which the fee is collected  
15 for the purpose of calculating or collecting judgment interest. This fee  
16 may be collected by an employer only once for each garnishment order  
17 or series of orders arising out of the same judgment debt. The employer  
18 may collect the entire fee from one (1) or more of the initial deductions  
19 from the employee's disposable earnings. Alternatively, the employer  
20 may collect the fee ratably over the number of pay periods during  
21 which deductions from the employee's disposable earnings are  
22 required.

23 (6) The deduction of the garnishment collection fee under  
24 subsection (5)(a) or subsection (7) is not an assignment of wages under  
25 IC 22-2-6.

26 (7) An employer who is required to make a deduction from an  
27 individual's disposable earnings in accordance with a judgment for  
28 payment of child support may collect a fee of two dollars (\$2) each  
29 time the employer is required to make the deduction. The fee may be  
30 deducted by the employer from the individual's disposable earnings  
31 each time the employer makes the deduction for support. If the  
32 employer elects to deduct such a fee, the amount to be deducted for the  
33 payment of support must be reduced accordingly if necessary to avoid  
34 exceeding the maximum amount permitted to be deducted under  
35 subsection (3).

36 (8) A support withholding order takes priority over a garnishment  
37 order irrespective of their dates of entry or activation. If a person is  
38 subject to a support withholding order and a garnishment order, the  
39 garnishment order shall be honored only to the extent that disposable  
40 earnings withheld under the support withholding order do not exceed  
41 the maximum amount subject to garnishment as computed under  
42 subsection (2).



1 SECTION 2. IC 33-34-1-5 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. The ~~judge of the~~  
 3 ~~circuit court shall extend aid and assistance to the judges in the conduct~~  
 4 ~~of all the township small claims courts~~ **elected under this article shall**  
 5 **select from among themselves a small claims administrative judge**  
 6 **to carry out the duties of the small claims administrative judge**  
 7 **under this article. The small claims administrative judge shall be**  
 8 **selected for a minimum term of twelve (12) months.**

9 SECTION 3. IC 33-34-2-4 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The ~~circuit court~~  
 11 **small claims administrative** judge may establish a regular hourly  
 12 schedule for the performance of duties by full-time or part-time  
 13 township small claims courts, and each judge shall maintain that  
 14 schedule.

15 (b) If the ~~circuit court~~ **small claims administrative** judge does not  
 16 establish a regular hourly schedule, the judge shall perform the judge's  
 17 duties at regular, reasonable hours.

18 (c) Regardless of whether a regular hourly schedule has been  
 19 established as set forth in subsection (a), a judge shall hold sessions in  
 20 addition to the judge's regular schedule whenever the business of the  
 21 judge's court requires.

22 SECTION 4. IC 33-34-2-9 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) A vacation of one  
 24 (1) month per year shall be provided for a judge who serves in a  
 25 full-time capacity.

26 (b) The ~~circuit court~~ **vacationing** judge may authorize the  
 27 appointment of a judge pro tempore to handle the judicial business of  
 28 the ~~vacationing judge~~, ~~if the circuit court, judge considers it if~~  
 29 necessary.

30 SECTION 5. IC 33-34-3-6 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. The **small claims**  
 32 **administrative** judge of the ~~circuit court~~, ~~assisted by shall, in~~  
 33 **coordination with all the other** judges of the small claims court, ~~shall~~  
 34 make and adopt uniform rules for conducting the business of the small  
 35 claims court:

36 (1) according to a simplified procedure; and

37 (2) in the spirit of sections 7 and 9 of this chapter.

38 SECTION 6. IC 34-55-8-7 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) **Except as**  
 40 **provided in subsection (b)**, after a hearing of which the judgment  
 41 debtor has been notified, the court may order:

42 (1) any property, income, or profits of the judgment debtor not



1 exempt from execution or process, in the hands either of the  
 2 judgment debtor or of any other person; or  
 3 (2) any debt due to the judgment debtor;  
 4 to be applied to the satisfaction of the judgment and forbid transfers of  
 5 property and choses in action.

6 **(b) If the judgment debtor has failed to comply with an agreed**  
 7 **order in the action, after a hearing of which the judgment debtor**  
 8 **has been notified, the court shall order:**

9 (1) any property, income, or profits of the judgment debtor  
 10 not exempt from execution or process, in the hands either of  
 11 the judgment debtor or of any other person; or  
 12 (2) any debt due to the judgment debtor;  
 13 to be applied to the satisfaction of the judgment and forbid  
 14 transfers of property and choses in action.

15 ~~(b)~~ (c) The judge ~~may~~ **shall** order that:

16 (1) the judgment or execution is a continuing lien upon the  
 17 income or profits of the judgment debtor in the hands either of the  
 18 judgment debtor or any other person, governmental officer, or  
 19 corporation from the date the order is served upon the person,  
 20 governmental officer, or corporation indebted to the judgment  
 21 debtor to the extent that the lien, together with all similar liens, is  
 22 permitted under IC 24-4.5-5-105; and  
 23 (2) the court may enforce all orders and decrees in the premises,  
 24 by attachment or otherwise.

25 ~~(c)~~ (d) A court in an action for proceedings supplementary to  
 26 execution shall issue an order directing a depository financial  
 27 institution (as defined in IC 28-9-2) to place a hold on a deposit  
 28 account in which the judgment debtor has an interest, either  
 29 individually or jointly with another person, whenever the conditions  
 30 prescribed under IC 28-9-3-4(d)(1) through IC 28-9-3-4(d)(3) are met.  
 31 An order issued under **this subsection:**

32 (1) is subject to the limitations as to duration of the restriction and  
 33 the amount to be restricted as specified under IC 28-9-4-2; and  
 34 (2) may be terminated or modified to reflect valid exemptions of  
 35 a depositor that the court has considered.

36 ~~(d)~~ (e) If an order for the placing of a hold on a deposit account is  
 37 issued under subsection ~~(c)~~; (d), a person whose deposit account is  
 38 affected may request a hearing from the court on the matter of:

39 (1) the person's right to claim certain funds in the person's deposit  
 40 account as exempt from garnishment; and  
 41 (2) whether the hold should be removed by the court.

42 ~~(e)~~ (f) If a court receives a request for a hearing under subsection



1 ~~(d)~~, (e), the court shall hold a hearing on the matter within five (5) days  
 2 (excluding Saturdays, Sundays, and legal holidays) after the court  
 3 receives the request.

4 ~~(f)~~ (g) If a person whose deposit account is affected by the order  
 5 issued under subsection ~~(e)~~ (d) files an affidavit with the court stating  
 6 that the funds in the account are exempt from garnishment, the court  
 7 may issue an order releasing the hold on the account without first  
 8 conducting a hearing.

9 **(h) If a court has issued a garnishment order to a third party  
 10 and the garnishment order no longer applies to the third party due  
 11 to a change in circumstances, the court may cancel the  
 12 garnishment order and issue a new garnishment order to an  
 13 appropriate third party, if all of the following conditions are met:**

14 **(1) The court has issued a garnishment order under  
 15 subsection (a) or (b) with respect to a judgment debtor's  
 16 income or profits in the hands of a third party.**

17 **(2) The judgment constitutes a continuing lien under  
 18 subsection (c).**

19 **(3) Due to a change in circumstances, including a change of  
 20 employment, the judgment debtor's income or profits are in  
 21 the hands of a new third party not named in the garnishment  
 22 order.**

23 **(4) The judgment creditor files a petition:**

24 **(A) notifying the court of the matters described in  
 25 subdivisions (1) through (3); and**

26 **(B) informing the court of the name, address, and other  
 27 relevant information concerning the new third party  
 28 holding the judgment debtor's income and profits.**

29 **A court may issue a new garnishment order under this subsection  
 30 without holding a hearing.**

31 **SECTION 7. [EFFECTIVE JULY 1, 2014] (a) As used in this  
 32 SECTION, "commission" refers to the commission on courts  
 33 established by IC 33-23-10-1.**

34 **(b) The general assembly urges the legislative council to assign  
 35 to the commission or another appropriate study committee the task  
 36 of studying:**

37 **(1) small claims court administration;**

38 **(2) the jurisdictional amount in small claims actions; and**

39 **(3) venue and the distribution of judicial resources in small  
 40 claims actions.**

41 **(c) If the commission or another appropriate committee is  
 42 assigned the topic described in subsection (b), the commission or**





1 committee shall issue to the legislative council a final report  
2 containing the commission's or committee's findings and  
3 recommendations, including any recommended legislation  
4 concerning the topic, in an electronic format under IC 5-14-6 not  
5 later than November 1, 2014.

6 (d) This SECTION expires January 1, 2015.



## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 366, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 39, delete "After" and insert **"Except as provided in subsection (b), after"**.

Page 4, line 40, reset in roman "may".

Page 4, line 40, delete "shall".

Page 5, between lines 5 and 6, begin a new paragraph and insert:

**"(b) If the judgment debtor has failed to comply with an agreed order in the action, after a hearing of which the judgment debtor has been notified, the court shall order:**

**(1) any property, income, or profits of the judgment debtor not exempt from execution or process, in the hands either of the judgment debtor or of any other person; or**

**(2) any debt due to the judgment debtor;**

**to be applied to the satisfaction of the judgment and forbid transfers of property and choses in action."**

Page 5, line 6, strike "(b)" and insert "(c)".

Page 5, line 16, strike "(c)" and insert "(d)".

Page 5, line 27, strike "(d)" and insert "(e)".

Page 5, line 28, strike "(c)," and insert "(d),".

Page 5, line 33, strike "(e)" and insert "(f)".

Page 5, line 33, strike "(d)," and insert "(e),".

Page 5, line 37, strike "(f)" and insert "(g)".

Page 5, line 38, strike "(c)" and insert "(d)".

Page 5, after line 41, begin a new paragraph and insert:

**"SECTION 7. [EFFECTIVE JULY 1, 2014] (a) As used in this SECTION, "commission" refers to the commission on courts established by IC 33-23-10-1.**

**(b) The general assembly urges the legislative council to assign to the commission or another appropriate study committee the task of studying:**

**(1) small claims court administration;**

**(2) the jurisdictional amount in small claims actions; and**

**(3) venue and the distribution of judicial resources in small claims actions.**

**(c) If the commission or another appropriate committee is assigned the topic described in subsection (b), the commission or committee shall issue to the legislative council a final report containing the commission's or committee's findings and**



**recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6 not later than November 1, 2014.**

**(d) This SECTION expires January 1, 2015."**

and when so amended that said bill do pass.

(Reference is to SB 366 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 5, Nays 4.

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#### SENATE MOTION

Madam President: I move that Senate Bill 366 be amended to read as follows:

Page 6, between lines 8 and 9, begin a new paragraph and insert:

**"(h) If a court has issued a garnishment order to a third party and the garnishment order no longer applies to the third party due to a change in circumstances, the court may cancel the garnishment order and issue a new garnishment order to an appropriate third party, if all of the following conditions are met:**

**(1) The court has issued a garnishment order under subsection (a) or (b) with respect to a judgment debtor's income or profits in the hands of a third party.**

**(2) The judgment constitutes a continuing lien under subsection (c).**

**(3) Due to a change in circumstances, including a change of employment, the judgment debtor's income or profits are in the hands of a new third party not named in the garnishment order.**

**(4) The judgment creditor files a petition:**

**(A) notifying the court of the matters described in subdivisions (1) through (3); and**

**(B) informing the court of the name, address, and other relevant information concerning the new third party holding the judgment debtor's income and profits.**

**A court may issue a new garnishment order under this subsection without holding a hearing."**

(Reference is to SB 366 as printed January 31, 2014.)

ZAKAS

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